amo REPORT

REPORT SERIES 1989

89-3 AMO RESPONSE TO DRAFT HOUSING POLICY STATEMENT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

MARCH, 1989

90-01038/

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario is a non-partisan voluntary organization united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total inter-governmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some seven hundred (700) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interests.

The following Sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections

- County and Regional Section
- Large Urban Section
- Northern Ontario Section (FONOM/NOMA)
- Rural Section (ROMA)
- Small Urban Section (OSUM)

Association Affiliates:

- Association of Municipal Clerks and Treasurers of Ontario
- Association of Municipal Tax Collectors of Ontario
- Municipal Engineers Association
- Ontario Municipal Administrators Association
- Ontario Municipal Personnel Association
- Ontario Municipal Social Services Association
- Society of Directors of Municipal Recreation of Ontario
- Urban Finance Officers Association of Ontario

To the Municipal Clerk:

Please circulate this Report to the members of council and to the staff of your municipality. Additional copies are available at $15.00 each from the Publications Centre, Association of Municipalities of Ontario, 100 University Ave., Suite 805, Toronto, Ontario, M5J 1V6.

TABLE OF CONTENTS

PART I -- ASSOCIATION CONCERNS

INTRODUCTION 1

THE SIGNIFICANCE OF POLICY STATEMENTS UNDER THE PLANNING ACT 2

AMO CONCERNS REGARDING INTERPRETATION AND STANDARDS 3

Interpretation 4

"Regional" Planning for Growth 4

Variety and Mix 5

Municipally Defined Planning Area 6

Affordable Housing 6

Standards 7

Determining Affordable Housing Types 7

Monitoring 7

Municipal Share of Regional Growth 8

RESIDENTIAL INTENSIFICATION 8

INFRASTRUCTURE 9

RURAL MUNICIPALITIES 10

IMPLEMENTATION, ENFORCEMENT AND MUNICIPAL AUTHORITY 14

EXCLUSIONARY BY-LAWS 16

PUBLIC RESPONSE 16

PART II – ASSOCIATION POSITION ON THE DRAFT HOUSING POLICY STATEMENT

INTRODUCTION 18

POLICY STATEMENTS UNDER THE PLANNING ACT 18

PROPOSAL FOR A NEW HOUSING POLICY STATEMENT 20

A New Housing Policy Statement 21

Determining the Need 21

Determining Affordable Housing Types and Targeting to Allow the Opportunity to Meet the Need for Affordable Housing 22

Timing of Implementation 23

Monitoring 23

Exemptions 23

MUNICIPAL AUTHORITY 24

ROLE OF THE PROVINCIAL GOVERNMENT 27

Housing First Policy 27

Monopolistic Control of Land 28

Infrastructure Funding 29

Housing Programs 29

Rental Housing 30

Equity Corporations 31

Taxation 32

Inter-Ministerial Coordination 32

ROLE OF THE FEDERAL GOVERNMENT 33

TABLE OF RECOMMENDATIONS 34

APPENDIX - I 38

I. The Planning Act, 1983 38

i. Section 3 -- Policy Statements 38

ii. Section 17 -- Official Plans 38

iii. Section 18 -- Planning Boards 38

iv. Section 22 -- Official Plan Amendments 38

v. Section 23 -- Ministerial Request for Official Plan Amendment 38

vi. Section 34 -- Zoning By-laws 39

vii. Section 46 -- Ministerial Zoning Order 39

APPENDIX -- II 40

II. Sections of the Planning Act with respect to the Significance of Policy Statements under the Planning Act 40

i. Section 3 -- Policy Statements 40

ii. Section 17 -- Official Plans 40

iii. Section 18 -- Planning Boards 41

iv. Section 22 -- Official Plan Amendments 41

v. Section 23 -- Ministerial Request for Official Plan Amendment 42

vi. Section 34 -- Zoning By-laws 43

vii. Section 46 -- Ministerial Zoning Order 44

APPENDIX -- III

ACKNOWLEDGEMENTS 46

The Associations official response to the draft Housing Policy Statement was transmitted to the Government in two stages. Part I was submitted to the Honourable Chaviva Hosek, Minister of Housing and the Honourable John Eakins, Minister of Municipal Affairs on February 18, 1989. Part II was forwarded to both Ministers following the April 1, 1989 AMO Board of Directors meeting.

PART I

ASSOCIATION CONCERNS

INTRODUCTION

AMO Position

The objectives of the Policy Statement are:

(a) To provide for access to housing for all types of households in all parts of Ontario.
(b) To provide for housing that is affordable to the households of Ontario.
(c) To increase the supply/availability of housing throughout Ontario.
(d) To ensure that the housing available is adequate and appropriate to the needs of the households in Ontario.

The Association strongly supports these objectives. The concerns of the Association relate to the feasibility of achieving these ends through the policies expressed in the Policy Statement.

The Association believes that the detailed concerns presented in this response clearly show that the mechanistic and inflexible approach to planning for residential development as presented in the Policy Statement are inappropriate and will be ineffective in dealing with the housing problems in this province. Further, the Association believes that this Policy Statement is subject to such wide ranging interpretations and planning difficulties that it will create sufficient conflict and controversy to actually have the effect of slowing down the development process in the province thereby reducing the rate of increase in the provincial housing supply.

The Policy Statement attempts to deal with the housing shortage by controlling municipal options in land use planning. Its approach and structure isolate it from other more significant factors in the housing market. If there is to be a Housing Policy Statement it should be drafted in careful coordination with other initiatives in such potential areas as: rent review, tax regulations, rental housing protection, the Landlord and Tenant Act, infrastructure funding, non-profit housing programs and commercial and industrial development strategies. The Association does not see such coordination in the drafting of the current Housing Policy Statement or other related provincial policies and legislation.

It is unusual for the Association to express a blanket rejection of a proposed provincial policy. This rejection was not arrived at lightly. Since all municipalities and other authorities must have regard to the Housing Policy Statement it must be a clearly expressed and fair document. It should not put municipalities under the burden of complex, expensive and detailed planning aimed at goals that are unachievable. This Policy Statement does just that.

The Policy Statement requires new priorities for residential planning and zoning based on an indeterminate data base for overall growth, variety and mix of housing, intermunicipal planning co-ordination and an inflexible affordability criteria. The Policy Statement provides no clear indication as to how such planning is to be accomplished; there is no indication of acceptable methodologies for planning and zoning and little municipal authority to ensure implementation. Yet the Government retains the right to overrule municipal actions based on lack of conformity to the Policy Statement.

The Policy Statement also requires long term municipal commitment for the funding of services for new development and intensification. Municipalities have already been asked to prioritize substantial funding commitments to upgrade sewer and water and solid waste management facilities. A ten year capital plan commitment for servicing new development will have to override these plans that the Government has already prioritized with statutory requirements. There is no long term provincial commitment for infrastructure funding.

For these and other reasons outlined in this response, the Association believes the draft Housing Policy Statement to be so flawed as to compel outright rejection.

RECOMMENDATION

That the Cabinet reject the draft Housing Policy Statement.

THE SIGNIFICANCE OF POLICY STATEMENTS UNDER THE PLANNING ACT[1]

Housing is currently not a matter of provincial interest under the Planning Act. The Cabinet approval of the proposed Housing Policy Statement will establish the detailed policies created by the proposed Housing Policy Statement as matters of provincial interest. This will present potentially significant ramifications for changes in the traditional municipal and provincial roles in the land use planning process and authority.[2]

---

[1]Planning Act, 1983, S.O. 1983, c.1., formerly the Planning Act, R.S.O., 1980, c.379.

[2]A summary and relevant sections of the Planning Act are included in the Appendix.

The Planning Act requires every municipal council, every ministry (including of course the Ministry of the Environment and the Ministry of Agriculture and Food) or government agency and the Ontario Municipal Board, among others, to have regard to policy statements when exercising any authority that affects any planning matter. The words "have regard to" have yet to receive an Ontario Municipal Board (OMB) or Judicial interpretation.

When the Housing Policy Statement is approved by Cabinet, the Cabinet may overrule decisions of the OMB on official plans, official plan amendments and zoning by-laws. The Minister of Municipal Affairs merely has to indicate that the provincial interest as expressed in the Policy Statement is adversely affected by the matter before the OMB to allow the Cabinet to exercise its prerogative and create its own official plans and zoning by-laws for municipalities. The Minister is not required to give any reasons for such actions nor any recommendations as to what a municipality may be expected to do in order to comply with the Housing Policy Statement.

There is no provision in the Planning Act that allows for any appeal procedure of these Cabinet decisions based on the provincial interest as expressed in a policy statement. For the Association, one of the most important aspects of the Housing Policy Statement is its potential use by the Provincial Government to significantly alter the relationship between the two levels of government, eroding the traditional autonomous leading role played by municipal governments in municipal land use planning.

AMO CONCERNS REGARDING INTERPRETATION AND STANDARDS

As noted above, every municipality, ministry, government agency and the Ontario Municipal Board shall have regard to the Policy Statement when exercising any authority that affects any planning matter. The Planning Act also provides the Provincial Government with the power to ensure that the provincial interest in housing is reflected in municipal land use planning. The Association therefore believes that clear, consistent interpretations of, and standards under, the Policy Statement are absolutely necessary to avoid conflict and confusion.

Wherever possible detailed definitions and explanations must be found in the Policy Statement itself. These definitions and explanations must be to the level of detail necessary so that all of those authorities required to have regard to the Policy Statement will have the same understanding of exactly what the Policy Statement means and the standards by which the Provincial Government will judge compliance. Since the Guidelines do not form part of the Policy Statement itself they should not be used to provide this level of interpretation. The Guidelines should be usable as a detailed technical resource or manual for municipal planners rather than as a vehicle for providing interpretation as to actual requirements under the Policy Statement. As noted in the following paragraphs, the Policy Statement and Guidelines do not meet these requirements and therefore create enormous potential for conflict.

This potential for conflict arises from the nature of the Policy Statement itself and the use to which it can be put. Since the above noted authorities, and particularly the OMB are required to have regard to the Policy Statement when exercising their authority, the policy statement may become a tool to be used by affordable housing interest groups, developers, municipalities, ratepayers, Ministry of the Environment, Ministry of Agriculture and Food, and neighbourhood groups all arguing significantly different interpretations and standards in hearings before the OMB.

Interpretation

"Regional" Planning for Growth

Paragraph 1.1 of the Policy Statement states that municipalities should consider the implications of their actions on the availability of housing to meet future local, regional and provincial needs. The Guidelines indicate that this means having regard for "needs in the region (CMA or Equivalent)" (Guidelines p.7)

Growth Projections

Paragraph 1.2 requires municipalities to plan for sufficient land (including conversion, infill and redevelopment) to be available to meet expected growth on a ten year time frame. Sub-paragraph 1.2.1 indicates that growth projections are to be based on:

(a) projected population of a municipality or municipal share of regional growth taking into consideration regional housing market growth.
(b) densities and standards of development to provide for an adequate range of housing types; and,
(c) feasibility of servicing lands for expected future growth.

The Guidelines indicate that for this paragraph region means economic region. The Guidelines further state that, "Projected population of municipalities are to be based on a reasonable share of expected residential growth for the region as a whole, and will be evaluated accordingly. In a growing region, municipalities will be expected to justify that they are providing for their share of regional growth". (Guidelines p.10)

Affordable Housing Types

Paragraph 1.6 requires municipalities to, "identify the types of housing that can be produced to meet the affordable housing objectives based on the consideration of the following locally applied factors:

- CMA or regional income distribution;

- affordability ranges for the lower 60% of the regional/CMA population..."

The Guideline reference to paragraph 1.6 states that "municipalities must plan for the income distribution for the entire region, not simply the traditional or anticipated population of the local municipality (p.12). There is no indication as to the difference, if any, between an "economic region" and a CMA.

Variety and Mix

Part two of the Policy Statement deals with official plans. Paragraph 2.1 requires municipalities to include in their official plans policies to provide for a variety and mix of housing in the community in keeping with regional demands and the impact of local market factors.

Paragraph 2.5 requires municipalities to designate lands throughout the community for the variety and mix of housing types within each municipally defined planning area, in keeping with the housing demands and the impacts of market factors in the Census Metropolitan Area or equivalent, which are capable of satisfying this policy.

It would appear that municipalities must plan for a variety and mix of housing based on "regional" demands and demands in the CMA or equivalent. There is no indication as to what the difference between these two terms is, if any.

The inconsistent use and inconsistent definition of the words "region, CMA or equivalent, economic region, CMA or regional, regional/CMA, entire region, leads to confusion. Apparently municipalities are to plan for their share of growth based on data for their economic region as a whole but plan for affordable housing types within that growth based on income dis-tribution for their CMA (Census Metropolitan Area) or equivalent and for variety and mix of housing based on both. It is not clear why municipalities should plan for housing types based on income figures for one area and yet plan for a share of growth for an area that may not have the same income distribution. Perhaps municipalities are to plan for growth share and housing types based on data for their CMA (Census Metropolitan Area) or equivalent. It is not clear what a CMA equivalent is. Statistics Canada uses CMAs, census divisions and census agglomerations. These census areas do no respect regional, county or even provincial borders. [See below under Municipal Share of Regional Growth at page 8.]

Most municipalities in Ontario are not within a CMA or even a regional municipality.

Municipalities and other authorities that must have regard to the policy statement will be evaluating municipal planning documents with no clearly defined geographical area data base on which municipal plans must be based.

Municipally Defined Planning Area

Paragraph 2.5 of the Policy Statement states that municipal official plans must, "Designate lands throughout the community for the variety and mix of housing types within each "municipally defined planning area"' in keeping with housing demands and the impacts of market factors in the Census Metropolitan Area or equivalent, which are capable of satisfying this policy". The Guidelines (p.17) state that, "These districts or planning areas are commonly included in official plans now. Typically, these areas are fairly large and would include identifiable neighbourhoods, districts, or secondary planning areas".

As pointed out in the Regional Municipality of Waterloo response," The stated Provincial Policy until now has been a disapproval of secondary plans as an appropriate planning mechanism unless approved as amendments to Official Plans. If this is the suggested approach then an additional delay will ensue, since even minor changes will require formal amendment."

This loose definition of municipally defined planning areas leaves open significant questions. It would appear that municipalities may define their own planning areas in which the policies will apply, but it is not clear. For a regional municipality the planning area may be the whole region. For area municipalities it may be the whole municipality or a part of it that has a secondary plan, or it may be a neighbourhood. It is not clear whether municipalities may choose what they consider to be a planning area and if the policy then only applies to that area, or whether application of the policy is to be more comprehensive.

Affordable Housing

In the Policy Statement affordable housing is defined as housing one half of which is affordable to households with incomes up to the 30th percentile and one half of which is affordable to households with incomes between the 30th and 60th percentiles for the Census Metropolitan Area or equivalent.

Affordability means annual housing costs (gross rent, or mortgage, principle and interest(amortized over 25 years and assuming a 25% down payment) and taxes) do not exceed 30% of gross annual household income.

These definitions are so inflexible as to prevent municipalities from identifying the neediest groups in their own municipality and to plan to meet their needs. In effect they require planning where the need is not the greatest. The definitions do not take into account the size of a household at any income level and the effect that will have on the reality of what is affordable to that household.

It is also very unclear as to what proportion of housing should really be in what range and can the entire range really be planned for. The use of percentiles in this inflexible definition creates the following situation, housing that is affordable to those at the 60th percentile is by definition <u>not</u> affordable to those below the 60th percentile. Housing affordable to those at the 45th percentile is by definition <u>not</u> affordable to those below the

45th percentile and on it goes. This definition leaves it totally unclear as to how the entire range of incomes in the definition is to be planned for.

Standards

Under the Policy Statement municipal planning documents and monitoring and review procedures will be subject to evaluation by the OMB and the Provincial Government to determine if they are furthering or adversely affecting the provincial interest in housing as expressed in the details of the Policy Statement. Most municipalities have not been engaged in the planning, zoning and review processes as established by the Policy Statement or the Provincial Government would not have thought it necessary to issue the Policy Statement. Since there is the possibility for the OMB and the Provincial Government to disapprove or amend these municipal plans and procedures, even after extensive municipal research and drafting has been completed, it is imperative that clear evaluation standards form part of the Policy Statement so that all parties will have an understanding as to what is expected and evaluation is not perceived as arbitrary.

Determining Affordable Housing Types

The Policy Statement requires municipalities to identify and plan for the provision of the types of housing that can be produced to meet affordable housing objectives. The Guidelines indicate that data is not published in a form usable for determining affordable housing income levels; however, the Government will be providing an annual update of this information in a usable form.

Most municipalities, however have also not planned specifically for the creation of affordable housing types. The Guidelines indicate that municipalities will be expected to conduct a proforma analysis of the factors contributing to housing production costs and then use the land use planning tools available to them to provide for the creation of affordable housing. Most municipalities have not in the past collected and analyzed production cost figures and the effect of land use controls on them. Neither the Policy Statement nor the Guidelines indicate what will be an acceptable analysis methodology.

Monitoring

Paragraph 2.6 of the Policy Statement requires municipalities to monitor how the objectives of the policy are being achieved. Municipalities do not currently monitor population and housing supply growth and housing prices to the level of detail suggested by the Guidelines. There is no indication of what will be considered an acceptable monitoring technique nor what the consequences may be if the results show that the objectives have not been met.

Municipal Share of Regional Growth

As noted above the Policy Statement indicates that municipalities will be required to plan for their share of regional growth (paragraph 1.2.1). The Guidelines indicate that municipalities will be evaluated as to how they have determined their share of regional growth. The need for a definition of "regional" has already been expressed.

It is not clear how a reasonable share of regional growth is to be determined or how it is to be planned for. For example, the CMA for Metro Toronto includes all of Metro Toronto, Peel Region and York Region and parts of Durham Region, Halton Region and Simcoe County. For each planning authority to determine its reasonable share of expected growth in the CMA it would have to coordinate its planning with the other planning authorities or expected growth would not be properly accounted for and there would be no way of predicting or understanding how their plans could be evaluated by the Provincial Government or any other authority pursuant to the Policy Statement. There is currently no mechanism to provide for this type of inter-municipal coordinated planning.

This situation is not unique to Metro. Durham Region has municipalities in three different CMA's, as does Niagara Region; the Windsor CMA includes ten municipalities in Essex County, the London CMA includes four municipalities in Middlesex County and the Ottawa CMA includes Hull, Quebec.

RESIDENTIAL INTENSIFICATION

Paragraphs 1.7, 2.4 and 2.5 of the Policy Statement indicate that municipalities will be required to amend their official plans to include policies that are supportive of residential intensification. In 1983 AMO published a report on a provincial study of residential intensification (AMO Report 83-10). AMO found that the concept of residential intensification was supportable as an option for use at the discretion of municipalities. The following paragraph in particular is expressive of AMO's position with respect to residential intensification as an aspect of the Policy Statement.

> "With respect to the recommendation that official plans and zoning by-laws be revised to permit conversion and infill in certain areas "as-of-right", AMO believes that zoning has traditionally been a municipal responsibility. Any suggestion to weaken such powers through Provincial intervention is strongly opposed. AMO believes that those municipalities that wish to encourage intensification should revise their official plans and zoning by-laws to facilitate conversions to the degree and in such areas as municipalities believe appropriate. Conditions and specifications should be as specific and objective as possible in order to provide certainly. AMO endorses the consultant's recommendations on regulatory changes only as suggestions for municipalities which want to actively encourage conversion or intensification. However, AMO believes that it must be left to each municipality to decide to what extent it wants to facilitate such activity."

The Guidelines (p.37) indicate that types of small scale residential intensification uses identified in official plans are to be permitted as-of-right. Further, zoning by-laws should be amended for these uses and currently restrictive standards should be altered to allow for the permitted use to be developed without requiring further amendments to zoning by-laws.

In many instances intensification will create an additional burden on municipal infrastructure and municipalities have very limited means to recover any of these costs.[3]

INFRASTRUCTURE

Paragraph 2.2 of the Policy Statement states that official plans must provide for the supply of land for a minimum of 10 years of residential development in keeping with this policy, this includes servicing policies to assist in implementing the plan to provide services for projected residential development for a minimum of ten years.

Many municipalities are currently under, and will be facing, new financial pressures in relation to the provision of services under their jurisdiction. AMO is currently conducting a review of Provincial Conditional grants to municipalities which should be published this spring. AMO is also participating in the Provincial-Municipal Social Services Review. The Provincial Government has also recently released a green paper entitled "Financing Growth Related Capital Needs" which covers municipal and school lot levies (with a forgiveness of 40% for affordable housing) and front end financing; this green paper will be reviewed by AMO as well.

With these current in depth reviews under way this preliminary response paper is clearly not the appropriate forum for detailed analysis of financing municipal infrastructure. However, it is worthwhile noting some of the new pressures on municipal finance.

AMO is naturally supportive of a cleaner environment, but new Ministry of the Environment regulations will significantly impact municipal budgets not only for new growth but for upgrading of existing facilities to meet higher standards.

The Municipal Industrial Strategy for Abatement (MISA) will impose tighter controls on industrial discharges into sewers and stronger regulations for sewage treatment plants. Meeting these new requirements will involve additional expense for many municipalities while some have real difficulty meeting current standards. According to the Ministry of the Environment "Report on the 1986 discharges from municipal Waste Water Treatment facilities in Ontario", 151 treatment plants or 37% did not meet the effluent requirements

---

[3]See the Municipal Act, R.S.O. 1980, c.302, ss.215,218 which allow municipalities to impose special charges for additional sewer or water supply capacity. There is currently no authority to provide for recovery of additional costs to the remainder of infrastructure services created by residential intensification on an existing service base.

for the fifteen conventional pollutants. According to the 1986 Report "some facilities fail because of operational inadequacies, some require modifications to process equipment or the collection system, and others require major capital expansion." Obviously municipalities do not have the financial capacity to fund both the upgrading of existing facilities and new infrastructure resulting from new development.

Waste management is another area where municipalities are facing new costs. There are currently some 35 waste management master plans in progress and 160 municipalities have less than two years capacity left in their landfill sites. Costs for new waste technologies are higher than for older unacceptable technologies. For example, the County of Wellington has estimated that a 200-300 acre landfill and transfer station will cost $3-4 million, with annual operating costs of $1.8 million. An energy from waste plant would cost $20-30 million.

The Provincial Government's recently released green paper titled "Financing Growth Related Capital Needs" indicates that municipalities will be permitted to use lot levies to recover up to 100% of growth related capital costs of all services, both hard and soft. In determining the capital cost for each facility, the municipality would calculate the present value of the capital expenditure, net any government grants, previous contributions and any and all reserves specifically earmarked for that capital expenditure.

The green paper also provides for school boards to create their own lot levies, while at the same time the Ministry of Education will be reducing capital grants to boards (for capital expenses and retrofit) from an average of 75% to an average of 60%.

The Association is concerned that capital grants to municipalities for infrastructure will be eroded since municipalities may use lot levies to finance up to 100% of growth related capital costs. The source of the funding for this infrastructure may have a significant impact on the economy of the province. If the funding comes directly and entirely from lot levies this may escalate housing prices enough to reduce the rate of housing production. If the funding came from general provincial revenues it may not impact the housing market as significantly because it will not be directly reflected in housing prices. An accurate determination of these impacts should be the subject of a Provincial Government economic study.

The Policy Statement requires long term municipal planning commitments for servicing residential growth but it does not indicate the level of detail of this planning nor does it indicate a provincial commitment to funding programs, as a reflection of the expressed provincial interest in housing, to assure the feasibility of these plans.

RURAL MUNICIPALITIES

The Policy Statement applies to all municipalities in Ontario. Many rural municipalities will be faced with unique difficulties by the requirements of the policy statement. For many rural municipalities within a commuting distance of an urban centre land cost is relatively

high and so affordable housing will require small lots. Since many of these municipalities are not on sewer systems larger housing lots will be required to accommodate septic systems and so the creation of affordable housing without infrastructure is impossible. Below are paragraphs quoted from the responses of two rural municipalities. The Association believes that the concerns expressed are reflective of the concerns of many rural municipalities across the province.

The Township of West Carleton responded in their letter of January 13, 1989 stating:

"(b) Development in Unserviced Rural Areas"

> ". . . Neither the Draft Housing Policy Statement or the guidelines address anything other than urban type development. Each individual local municipality whether urban or rural is, however, required to formulate policies to implement the guidelines. In the case of the Township of West Carleton being one of the Municipalities which form the Regional Municipality of Ottawa-Carleton, such policies must be in place within one year of issuance of the Policy Statement. We feel that it is imperative that the final policy Statement make provision for areas which are not serviced by either municipal water and sewer or public transportation.

(c) Provision of Affordable Housing

> Of the housing built in the Township of West Carleton within the past two years, 69% would satisfy the needs of the moderate income (60th percentile) families. None of the housing would, however, meet the needs of the low income population. The reason for this is the fact that the density required cannot be accommodated on private wells and septic systems.
>
> Consideration must also be given to the fact that as there is no public transportation system, a car is not a luxury in the rural area, it is an absolute necessity. This, added to the fact that there are no subsidized day care facilities located within the Township, or other support systems, make it questionable whether low income families would wish to locate in rural areas.
>
> The Policy Statement requires that the 25% affordable housing which must be provided is to be divided as to 50% for the low income and 50% for the moderate income residents. We can see no way that this requirement can be met at the low income level without creating a serious risk of ground and water pollution.

(d) Land Designation and Defined Planning Areas

The Policy Statement requires that land should be designated for development in the Official Plan, that defined planning areas be identified and that the Official Plan provide for the density of development within these planning areas.

The Township of West Carleton covers 232 square miles with a population of 12,300 and no major population centre. Over 50% of the land is high priority agriculture where residential development is not permitted. Density of development is decided by a hydrogeology study and terrain analysis which must be done before any development receives draft approval. If the municipality is to predesignate land for development and the density of that development, it will be necessary to have the appropriate studies done for all non-agricultural land within the Township. The cost of this is beyond the resources of a rural municipality."

". . . Of all the policies contained in the Policy Statement, this could cause the greatest environmental damage, risk to the residents from water pollution and potential cost to the Province to provide alternative water supply. All existing policies set densities which are considered safe for ground water and sewage disposal factors. At the present time any increase in such density, ie. from a single family dwelling unit to a duplex requires a rezoning. This gives the Ministry of Environment an opportunity to review the application and make known any concerns as to the suitability of the well and septic system to accommodate the additional unit. To require any unserviced municipality to permit indiscriminate conversions as set out in the draft Policy Statement shows no concern for either the natural environment or the health and welfare of future residents."

". . . While the Council of the Township of West Carleton is concerned that few of our young people are able to remain in the municipality after reaching adulthood due to lack of affordable accommodation, it also recognizes that being unserviced, we cannot provide the type of accommodation necessary, ie. townhouses, etc. In the event any part of the municipality should receive municipal services, then an amendment to the Official Plan would be required and at that time the serviced land would be made a defined planning area and policies put into place to provide for affordable housing. In the meantime, the Ministry of Housing and Ministry of Municipal Affairs should discuss the whole matter of

development in unserviced areas with representatives of the Ministry of Environment. It may also be of assistance if this Ministry were asked to provide information as to the amount of funds at present committed by the Province under the Direct Grant Program to remedy problems in unserviced areas caused by just the type of over-development which is now being envisaged by the Ministry of Housing and Ministry of Municipal Affairs."

The Town of East Gwillimbury responded in their letter of January 5, 1989 stating:

". . . At the present time the Provincial Government have[sic] not made any commitments for additional funding for the provision of servicing and infrastructure such as roads and schools for East Gwillimbury. It is difficult to develop affordable housing on half acre lots serviced by septic systems. The Rural Communities Servicing Study, recently prepared for York Region, is recommending a further increase to a minimum size of 1 acre lots for properties on private sewage systems. This recommendation is not compatible with the Provincial goal to create affordable housing.

East Gwillimbury wants to build a complete community with commercial and industrial employment available for residents. Therefore, when considering affordable housing it is also necessary to consider the employment base in order that a large "bedroom community" is not created. The provision of servicing would benefit the commercial and industrial employment base thereby creating a more balanced community. It would also provide necessary tax assessment for the increase in services required to support affordable housing such as roads, sewers, schools and libraries.

To permit residential intensification in existing single family neighborhoods would have the potential to permit many more residents without increasing the tax base to pay for the additional services required. In addition it could destabilize existing neighborhoods and would meet with strong opposition from many residents. More appropriate policies would permit intensification to occur only in new developments with full servicing available.

The Policy Statement does not deal with speculation which leads to high land costs making affordable housing difficult to achieve. In the Town of East Gwillimbury there are rural lands which are speculated on long before any urban designations are applied, or any urban development is anticipated by the Town.

> In addition the policy statement does not recognize that affordable housing will also be subject to speculation and may not be affordable for very long.
>
> The Implementation Guideline contains affordability calculations which states that for a person with an annual income of $26,500 an affordable price for a house would be $75,500. Unless the Province is prepared to heavily subsidize the land and construction costs for this housing this price will be unattainable in East Gwillimbury."

There are other problems with the Policy Statement that are unique to rural municipalities. In "cottage country" and other rural municipalities with a strong tourism industry, there is concern over what will be considered housing development. If "cottage" development is considered to be housing development it is therefore subject to planning for variety and mix and affordability. In these municipalities there may be a majority of proposed development in the form of "seasonal" or "recreational" housing. This is often actually year round housing that is only occupied on weekends, etc. It is not clear how this is to be accounted for when planning for development. Is it at all realistic to plan for variety and mix and 25% affordable housing development in these municipalities?

For some rural municipalities, there is real apprehension that the Policy Statement may be used by neighbouring urban municipalities as a justification for annexation to provide for the ten year supply of land.

IMPLEMENTATION, ENFORCEMENT AND MUNICIPAL AUTHORITY

There are substantial limitations on municipal authority to plan and zone in an attempt to implement the policies expressed in the Policy Statement, especially with respect to affordable housing.

Paragraph 3.2(c) requires municipalities to set zoning by-laws to," include provisions and, as necessary, minimum and maximum standards to implement and provide for the housing types which will fulfill the affordable housing objectives of this policy". It is trite to say that in those municipalities with high housing demand and short supply the cost of land is the largest factor in the price of housing. The Policy Statement does <u>not</u> specifically require municipalities to zone for maximum lot sizes; however, zoning for maximum lot sizes could be one way of controlling the cost of housing.

Municipalities have clear authority to control minimum lot sizes through zoning by-laws.[4] There is no authority for municipalities to control maximum lot sizes or frontages through

---

[4]See Planning Act. S.34(1), paragraph 4 and S.34(3).

zoning and so it would probably be illegal for municipalities to attempt to do so.[5] This means that municipalities cannot use zoning for control over one of the key components in the cost of housing.

Prior to the amendments to the Planning Act in 1983 municipalities could pass by-laws regulating the cost of construction and the external design of buildings. The amendments to the Planning Act eliminated these features from the zoning by-law authority and so zoning by-laws may no longer deal with the cost of construction or the external design of buildings.[6]

Since "There can be no doubt that at common law the owner of land may do anything with it that he desires to do, and that right is not to be infringed upon except insofar as a statute in clear terms permits",[7] it is uncertain what other maximum standards may be imposed via zoning by-laws, although the Guidelines state "To ensure that the types of housing identified as affordable housing be built within the identified zones, it may be necessary to incorporate specific zoning standards which would permit only the housing types identified as affordable in the zones intended for affordable housing."(p.19) The Guidelines do not indicate what types of maximum standards may be imposed to achieve this objective or the legal authority for municipalities to impose them.

The Association is very concerned that in spite of the best efforts of municipalities, with the limited planning tools available to them, to provide the opportunity for the creation of affordable housing, there is no way for municipalities to ensure that this housing is actually built or that if it is built it will go to those most in need. Municipalities have no means of controlling occupancy so as to be sure that affordable housing goes to those in the income bracket it was intended for.

There are also no clear municipal powers for controlling the original price of housing and speculation on land and finished housing. Municipalities also have no clear authority to require land dedications for affordable housing or cash in lieu. Neither are municipalities able to zone for types of tenure(rental versus ownership)

---

[5]"The courts have more frequently applied the rule of strict construction: common law rights cannot be held to have been taken away or affected by a statute, or by-law passed under it's authority, unless it is so expressed in clear language . . ."

Rogers, Ian Mac F., Q.C., Canadian Law of Planning and Zoning. The Carswell Company Limited: Toronto, 1988. p.13.

[6]From the Law Society of Upper Canada. Bar Admissions course. 1987/1988, Notes for the Real Estate Course, Chapter 6.

Land Use Controls and Land Use Planning Ontario: The Planning Act, 1983 by Dennis H. Wood, B.Comm, L.L.B. of McCarthy and McCarthy, p. 133.

[7]Rogers, Canadian Law of Planning and Zoning, p.12.

Paragraph 3, 2(b) of the Policy Statement requires municipalities to set zoning by-laws to "provide for the variety and range of housing types, on the basis of provincially accepted standards of health and safety. In particular, minimum unit sizes are not to exceed the minimums required in the Ontario Building Code." The Planning Act clearly gives municipalities the right to set minimum unit sizes. The Policy Statement in effect amends these sections of the Planning Act without actually creating a formal amendment. The Association believes that a Policy Statement is an inappropriate vehicle for amending the Planning Act.

If municipalities are to play anything near the role required of them by the Policy Statement the Provincial Government will have to pass legislation giving them the necessary powers to fulfill this role.

EXCLUSIONARY BY-LAWS

Subparagraphs 2.4(a) and 3.2(d) effectively require municipalities to eliminate so called "exclusionary by-laws". These by-laws typically limit the number of "unrelated" persons that can occupy a dwelling unit. The Policy Statement requires the amendment of by-laws to permit the sharing of all residential units operating as a single housekeeping unit. The Guidelines indicate that by-laws should not distinguish between residents whether they are related or unrelated. "This policy means that any household which has chosen to reside in a single dwelling unit out of choice or because of some social bond between them should be allowed to reside in <u>any</u> dwelling unit within the municipality in accordance with the same regulations that apply to family households,....." (Guidelines p. 16, see also p. 38). The Policy Statement does clearly indicate that municipalities are <u>not</u> required to permit group homes, boarding houses or other forms of supervised residential care.

AMO has already submitted its position with respect to exclusionary by-laws in the AMO Report 88-9. The Association reaffirms its position as established in that report. The Association is of the view that limits on unrelated persons are not intended to be discriminatory in any way, but are merely put into place as a means of neighbourhood protection and preservation. The Association would point out that all by-laws, by their nature, are restrictive of some form of activity. The removal of the authority to establish exclusionary by-laws would adversely affect a number of communities by altering effectively proven municipal standards and thereby adversely affecting existing standard family occupied housing.

PUBLIC RESPONSE

Many municipalities will be faced with strong public opposition when they endeavour to implement aspects of the Policy Statement. The Policy Statement does not speak to this issue although it is recognized in the Guidelines. The Guidelines suggest the need for a strong and complete commitment from municipal councils in achieving housing objectives. The Guidelines also suggest, among other things, that municipalities should provide the

public with positive information about the potential for success in meeting the housing need in the municipality. It is suggested that municipal officials collaborate with interested parties to resolve concerns and that representatives from the Ministry of Housing (if appropriate) would become involved. The Guidelines also suggest that council members adopt a supportive advocacy role whereby the needs and rights of future residents to be part of the community are advocated to the local residents.

The Guidelines only make one brief suggestion as to the involvement of representatives from the Ministry of Housing. There is no indication of any Provincial Commitment to supportive programs in furtherance of the provincial interest in housing. There is no commitment from the Provincial Government to show its strong support for municipalities that attempt to comply with the Policy Statement. The Policy Statement does not indicate any provincial commitment to providing information packages regarding the actual positive impact of different types of housing initiatives on communities, particularly the effect on property values.

PART II

AMO POSITION ON THE DRAFT HOUSING POLICY STATEMENT

INTRODUCTION

The Ministers of Municipal Affairs and Housing released the Provincial Government's draft Housing Policy Statement at the AMO annual conference on August 25, 1988. At that time the Ministers indicated they would welcome responses from municipalities individually and from AMO, with the deadline for submissions being February 28, 1989. Due to municipal elections in November and the late release of the guidelines to accompany the Policy Statement, AMO found it necessary to prepare their response in two stages to both meet the deadline and to reflect the views of the membership. The AMO Preliminary response was forwarded to the Provincial Government on February 15, 1989.

Since that time approximately 70 municipal submissions have been reviewed, the ideas behind the recommendations in this report are based heavily on those submissions.

The critique of the Policy Statement in the AMO Preliminary Response stands. Additional strong and detailed critique is found in the municipal submissions. However, the aim of this paper is chiefly to make positive recommendations to the Provincial and Federal Governments for **action** to relieve the affordable housing crisis faced by many Ontario municipalities.

POLICY STATEMENTS UNDER THE PLANNING ACT

The Planning Act 1983 created the vehicle of policy statements as expressions of provincial interest on matters relating to municipal planning. Both the provincial and municipal levels of government have very little experience with the issuance of policy statements under the Planning Act.

The Planning Act requires the Provincial Government to confer with municipal, provincial, federal and other bodies that have an interest in the proposed policy statement before it is approved by Cabinet. It is submitted by AMO that this consultation process should be undertaken with the objective (though not requirement) of developing a consensus among the concerned parties with respect to the proposed policy statement. Further, that this effort at consensus building must not only be done in good faith, but it must be seen to be done in good faith.

The Association of Municipalities of Ontario believes that policy statements under the Planning Act are useful and potentially very powerful tools for the Provincial Government

to directly affect the way municipalities and other authorities use their powers under the Planning Act. The Association also believes that proper use of this power requires extensive consultation with interested parties, who not only will be effected by the policy statement, but also who may have valuable experience and expertise to contribute to the development of policy statements.

As noted in the AMO Preliminary Response, the creation of policy statements under the Planning Act gives substantial powers to the Provincial Government that it does not otherwise have. Once a policy statement has been approved by Cabinet, the Minister of Municipal Affairs merely has to indicate that the provincial interest, as expressed in the policy statement, is affected by a matter before the Ontario Municipal Board, to give the Cabinet the authority to exercise its prerogative and create its own official plans and zoning by-laws for municipalities. The Minister is not required to give any reasons for such actions nor any recommendations as to what a municipality may be expected to do in order to comply with the policy statement.

There is currently no procedure for establishing priorities between different policy statements and guidelines or other provincial directives. There is real potential for these expressions of provincial government concerns to be in conflict with no way for a municipality or development proponent to know how these concerns should be prioritized, especially since these provincial directives come from different ministries.

The following recommendations are submitted with the goals of creating a fair procedure for developing better policy statements and for certainty as to the requirements of policy statements and other Provincial Government directives.

RECOMMENDATION #1

(a) Where guidelines are to accompany a policy statement they must be released at the same time as the draft policy statement.

(b) AMO should be provided the opportunity for a two staged response. During the general consultation period AMO would submit a preliminary response. After the deadline for submissions has passed Ministry staff and AMO representatives should review and discuss the all submissions, including those of government ministries and agencies, together for an agreed upon time period after which AMO will make its final response.

RECOMMENDATION #1 *(cont.)*

(c) *The Planning Act should be amended to require the Minister to give reasons why a provincial interest is affected by a matter when he\she uses the Ministerial "prerogative" powers under the Planning Act. Further, such reasons must include detailed recommendations to the subject municipality as to what that municipality may be expected to do in order to comply with a policy statement.*

(d) *Until such time as recommendation #1(c) is carried out the Minister of Municipal Affairs should make a clear commitment in each policy statement issued to give the reasons and recommendations noted in #1(c).*

(e) *The Provincial Government must establish a formal procedure for expressing Provincial priorities with respect to conflicting or potentially conflicting provincial policy statements, guidelines and any other vehicle for expressing provincial interest with respect to municipal planning. This procedure should provide a clear written statement of provincial priorities to municipalities in advance of their creation of official plans, zoning-by laws and other Planning Act tools.*

(f) *Where recommendation #1(e) is not possible the minimum requirement is for the Provincial Government to prepare comprehensive checklists for development applicants which would clearly express the provincial interests and priorities that a development application should address and the provincial criteria for evaluating that application.*

PROPOSAL FOR A NEW HOUSING POLICY STATEMENT

A review of the municipal submissions shows that the drafting of a housing policy statement appropriate for all municipalities in the province is a difficult task. Many of the criticisms of the Draft Policy Statement are based on the fact that it is a highly technical document with several basic definitions and requirements that are inflexible. This lack of flexibility restricts municipalities from truly identifying housing needs and basing their planning on meeting those needs, as far as planning tools can.

RECOMMENDATION #2

A new provincial housing policy statement should be drafted by a committee with representatives from AMO, the Ministries of Municipal Affairs and Housing and representatives of the development and building industries.

A New Housing Policy Statement

A brief outline of the nature of such a policy statement is proposed below.

The Provincial Housing Policy Statement should require municipalities to prepare their own housing policy statements. These municipal housing policy statements should not be part of the official plan but should make specific recommendations as to how the official plan and zoning by-laws can be amended to achieve the goals stated in the municipal housing policy statement. Municipalities would then be required to amend their official plans and zoning by-laws pursuant to the recommendations in their own housing policy statement.

There is no restriction under the Planning Act preventing this type of Provincial policy statement, that is to say requiring the development of municipal policy outside of official plans, to direct the development of official plans. The current Draft Housing Policy Statement requires substantial work to be done prior to the actual exercise of municipal authority through amendments to official plans and zoning by-laws. At the point where any authority under the Planning Act is exercised by municipalities they must show they have had regard to provincial policy statements, so this proposed New Housing Policy Statement would be fully enforceable by the OMB and the Cabinet.

Determining the Need

The municipal housing policy statement must of course begin by determining the need for affordable housing within the municipality. This should include not only anticipated growth but an accounting for those people currently housed in unaffordable accommodation. The affordability criteria should be developed municipally to reflect the realities of the particular demographics of the municipality.

Developing the data base to determine affordable housing needs will require surveys of such variables as income, rents, prices, population and household characteristics and housing supply at the local level and, where upper tier official plans exist, at the upper tier level as well. Contact with service groups for special needs housing may also be necessary. In many instances this data base may be lacking and the provincial government must be prepared to assist municipalities in developing the data base since this will provide the Provincial Government with a complete data base for the province.

There is a concern that some municipalities do not plan for affordable housing need based on the demand for affordable housing outside of their own borders. The concern is that this creates an exclusive community and places undue burdens on those nearby municipalities with a high demand for affordable housing. Planning for the total housing demand based on the jurisdiction of the upper tier level of municipal government should be sufficient to deal with the concern of planning for a "fair share" of the broader growth in need for affordable housing outside local municipal boundaries. The Planning Act currently requires lower tier official plans to comply with upper tier official plans.

The Greater Metropolitan Toronto area may present its own "fair share" problem. The resolution of this problem should be dealt with by all of the governments concerned, perhaps with the creation of a Committee on Affordable Housing for the Greater Metro Area that could allocate the "share" of affordable housing to each Regional municipality. This Greater Toronto problem should not be resolved by imposing a new way of planning or an additional bureaucratic layer on municipal governments throughout the province.

Determining Affordable Housing Types and Targeting to Allow the Opportunity to Meet the Need for Affordable Housing

Determining affordable housing types and targets will be based on the pre-determined need, as developed through the process noted above. The affordable housing types must fit the need. At this stage municipalities should be required to consult with local developers and builders for assistance in determining appropriate design and cost factors. Developers and builders would be requested to provide these services gratis. Consultation with other community groups will also be necessary. The objective is, of course, a balance between protection of community standards and encouragement of lower priced private housing; this may require detailed and protracted consultation.

That portion of the existing housing stock that is regularly on the market as well as new housing must be considered when determining targets for new development and intensification. Intensification as of right will not be required, but municipalities will be required to include a study of intensification potential based on the principle of compatibility with existing development and a consideration of mitigation measures against potential negative impacts.

The creation of targets for affordable housing types in new growth and intensification should include a review of existing and proposed infrastructure, both hard and soft, as well as potential commercial and industrial development. Infrastructure capital costs and projected long term operating cost impacts on municipal finance and the property tax base, which will affect the cost of housing, must be taken into account when targeting affordable types. Reduced standards to create lower initial prices will not be required where they will result in higher long term costs to municipalities.

Municipalities should then be required to explicitly and accurately indicate how they can provide the opportunity to implement the targets with the planning tools then available to

them and under existing Provincial Government restrictions (ex. Ministry of Environment requirements), while having regard to sound planning principles. Official plans and zoning by-laws should be amended to provide for these opportunities with specific reference to the municipal housing policy statement.

Where municipalities find that they cannot effectively plan to provide the opportunity to meet these targets they should indicate why these targets cannot be met and what authority, funding and changes to Provincial or Federal Government legislation or programs they may need in order to meet the targets. Municipalities in this case should also be allowed to concentrate their available planning resources directed to providing the opportunity for affordable housing, on the most needful group in their target range.

Timing of Implementation

The development of these studies and proposals should not be expected to take less than a year to be at the stage of proposed amendments to official plans. Amendments to zoning by-laws should be expected to take another year.

Monitoring

To determine the success of the municipal housing policy statement the housing market for both need and supply will have to be monitored regularly. The development of the data base for determining the need should provide the opportunity to determine an appropriate monitoring method. This monitoring method should be expressed in the municipal housing policy statement and should be used to update the statement on a regular basis.

It is worth noting that the Provincial Government may have the best access to housing prices, if not rents. The provincially run land registry offices register the change of ownership of real estate throughout the province. When a change of ownership of land, including condominium apartment ownership, is registered, a land transfer tax affidavit is filed with the land registry office. This affidavit notes the price paid for the property. Since the price information is at hand at this stage, the Provincial Government could develop a method for accurately monitoring prices on a local basis.

Exemptions

It has been proposed that some types of municipalities should be exempted from compliance with the Draft Provincial Housing Policy Statement. The proposed outline for the development of a New Provincial Housing Policy Statement, requiring municipalities to create their own housing policy statements, should be flexible enough to allow rural or other small municipalities to prepare inexpensive and relatively straight forward housing policy statements. Allowing for exemptions to the preparation of a municipal housing statement should be considered with caution. The proposed New Housing Policy Statement provides rural municipalities with the opportunity to determine their need for affordable

housing and their ability to meet that need. To exempt them from the New Policy Statement may be taken as an indication that the needs of rural municipalities for more affordable housing are unimportant to the Provincial Government.

MUNICIPAL AUTHORITY

The Association of Municipalities of Ontario realizes that the Provincial Government recognized in its Draft Housing Policy Statement that the land use planning process is only one of many factors influencing the supply of affordable housing. However, it is the opinion of AMO that existing municipal land use planning based on sound planning principles is not usually an impediment to the production of reasonably priced housing. The following quotes from municipal responses to the draft housing policy statement provide clear evidence of the basis for this opinion.

From the response of the Township of Glanbrook, prepared by May, Pirie & Associates Limited:

> Very generally, rising house prices are primarily a function of one or more of the following: increases in demand; land speculation and monopoly concentration in land ownership; escalating development costs, including increases in the costs of materials, land, labour and capital; behaviour of financial institutions; and an increasing number and complexity of development and planning approval procedures. While some of these factors may have a greater impact than others, all contribute in some way to the overall increase in the cost of housing....
>
> ...In our opinion, most official plans currently contain policies which provide the opportunity for a variety of housing types within a municipality. However, the types of units that may be considered affordable to a particular sector of the population are still not being built, even though official plan policies certainly do not prevent this type of construction.

From Report No. 5 of the City of Toronto Neighbourhoods Committee:

> The proposed housing policy aims to discourage municipalities from using exclusionary planning tools which reduce or eliminate opportunities to develop low and moderate income housing. On the other hand, the draft policy statement does not even consider giving municipalities the authority to use inclusionary planning tools which would **require** developers to provide moderate income housing, where appropriate. The expectation is that, if municipalities plan and zone so as to lay

> the ground-work for development of moderately priced housing, developers will automatically build it. But they may not do so. (emphasis added)
>
> For example, CMHC Housing Market Surveys for the Toronto Region have been indicating an over-supply of **luxury** condominium apartments and a shortage of smaller, moderately priced apartments since the early 1980's. Although the City of Toronto has laid the groundwork for development of small, moderately priced condominium apartments, relatively few have been provided. (emphasis added)
>
> ...authority to require developers to include some new affordable housing for moderate-income groups in their projects, where appropriate, may well result in construction of more small condominium apartments. This would perhaps relieve some of the intense condominium conversion pressure on the existing moderate-rental housing stock.
>
> It would be appropriate for City Council to urge the government to also include in the Planning Act provisions which give municipalities the option of re-zoning marginal non-residential lands, where deemed to be appropriate, by residential tenure, for ownership housing, private-rental housing or social housing, alone or in combination with non-residential uses, rather than simply for residential or mixed use.

From the response of the Regional Municipality of Peel:

> Staff have serious reservations about the second and fourth principles, which suggest that changes in the land use approval process and in serviced land supply will reduce costs. This is simply not the case in Peel. The Region in fact has a supply of over 15 years of designated serviceable land still to be developed. Rather, it is the combination of market forces, notably strong growth-related demand, coupled with a tendency for private builders to respond to the top end of the market, which has given rise to increased land and housing costs in Peel.
>
> ...any attempt at government intervention in the field of price regulation or purchaser control, in the absence of direct control over the land, would be a bureaucratic headache. Indeed, rent review and rent control processes would appear to be a trifling matter by comparison. Those who are least able to compete financially would once more be shut out and placed on waiting lists.

> The solution lies in a more balanced housing market orientation by the private sector, which can only be brought about by major legislative and regulatory reforms at the federal and provincial levels. Moreover, the planning process itself also needs to be a pro-active program of the municipality, which requires the provision of affordable rental and ownership housing.
>
> The proposed Policy Statement, therefore simply does not go far enough. **Requiring municipalities to amend their official plans and zoning by-laws only addresses part of the regulatory environment and will not result in anything different than what is being produced today.** [emphasis added]

Even if the AMO proposal for a new housing policy statement was implemented it would be largely ineffective in changing the types and prices of housing being built by the private sector. As noted in the Preliminary AMO Response municipal authority to effectively plan for affordable housing production is extremely limited. If the objectives of a provincial housing policy statement are to be met the Provincial Government would have to create substantial amendments to municipal planning and zoning authority.

RECOMMENDATION #3

The Planning Act, the Municipal Act and other relevant legislation would have to be amended where necessary to provide municipalities with clear authority in the following areas:

- ***(a)*** *Control tenure through zoning and subdivision agreements, this power to be limited to providing for the creation of affordable housing only.*
- ***(b)*** *Require land dedications for affordable housing or cash in lieu.*
- ***(c)*** *Power to impose "use it or lose it" conditions on subdivision agreements that are not fulfilled within agreed to time periods.*
- ***(d)*** *Control cost and price through zoning and subdivision agreements.*

RECOMMENDATION #3 (cont.)

(e) To tax land subject to unregistered subdivision agreements on the basis of the land use described in the subdivision agreement.

(f) To zone for maximum lot and unit sizes.

(g) Improved rights of access to enforce by-laws.

It is of course arguable that these proposed powers can be used irresponsibly to create less affordable housing and more exclusivity. All government powers are subject to potential irresponsible use. The proposed new housing policy statement, which would require municipalities to draft their own housing policy statements, would provide a rationale for appeal to the OMB where powers were used without regard to such policy statements and the Cabinet still has the ultimate prerogative powers.

ROLE OF THE PROVINCIAL GOVERNMENT

Even with expanded municipal authority all municipalities can do is to continue to create the opportunity for affordable housing. The most significant factors affecting the creation of affordable housing are under the direct control of the Provincial Government. It follows that the success of the proposed New Housing Policy Statement will depend to the largest degree on the commitments that the Provincial Government is willing to make.

Housing First Policy

The Provincial Government's Housing First Policy encourages the construction of affordable housing on "surplus" lands owned by the Provincial Government. Several projects have already been commenced under this policy and the government is to be applauded for this effort so far. However, this policy has not received formal expression in a detailed publicly available program outline. Such a program should include an express policy for determining what is "surplus" land and the price and conditions on which it would be made available for housing development. Without this detailed program the Housing First Policy retains the appearance of being an informal ad hoc process subject to inconsistent application.

In high growth municipalities the supply and cost of land with water and sewerage capacity available is the leading cost factor in the price of new housing. The Provincial Government has not made public a complete inventory of its undeveloped and underdeveloped land holdings and the accompanying water and sewer allocations. It may be that the Provincial

Government is one of the largest holders of developable lands in the province, but this cannot be known until the information on its land holdings is made publicly available. **AMO holds the credibility of the Provincial Government with respect to its willingness to make affordable housing a priority, to be in serious doubt until the following recommendation is acted upon.**

RECOMMENDATION #4

(a) ***The Provincial Government should forthwith publish an inventory of its undeveloped and underdeveloped land holdings in the Greater Metro Toronto area, including a listing of the water and sewerage capacity allotted to those lands expressed in absolute terms and as a percentage of the total unused capacity.***

(b) ***As soon as possible thereafter the Provincial Government should publish a similar inventory with similar terms for all of its lands that have potential for development. Such potential should not be based on proposed government use for the lands but on its potential for housing development if the government were to release it.***

(c) ***The Provincial Government should aggressively seek proposals for affordable housing development on the lands noted in 4(a) and (b).***

(d) ***This Housing First Policy should be applied in urban areas across the board to all lands held by all Provincial Government Ministries.***

Monopolistic Control of Land

In October of 1988 the Globe and Mail newspaper produced a series of reports that made allegations that developable land in the Greater Metro Toronto area is subject to monopolistic control. The Minister of Housing was quoted as saying that she believed the Federal Government was looking into the matter and that she would take no action until the Federal Government report was released.

RECOMMENDATION #5

The Provincial Government should not wait for the Federal Government to investigate this matter but should actively and aggressively undertake its own investigation immediately with a commitment to make the results publicly available.

Infrastructure Funding

The new and increasing pressures on municipal infrastructure were examined in detail in the AMO Preliminary Response. A review of the municipal responses to the Draft Housing Policy Statement shows that the chief concern of municipalities in planning for housing growth is funding for infrastructure. The Provincial Government has clearly expressed its desire for municipalities to plan for long term growth. It is also the intention of the government to make the creation of affordable housing a matter of provincial interest. At the same time the government has not made a long term commitment to fund infrastructure to support this provincial interest.

RECOMMENDATION #6

Since the Draft Housing Policy Statement expressed the planning for servicing of residential growth on a ten year time frame as a matter of provincial interest, the Provincial Government should support that provincial interest with a ten year commitment to adequate funding for the development of municipal infrastructure.

Housing Programs

The municipal submissions indicate that restrictions in provincial housing programs can hamper efforts to provide affordable housing.

The maximum unit price (MUP) is a figure used as a criteria for government funding of certain housing projects. In order to be eligible for funding assistance project proposals must show a price per unit at or under the MUP. The valid objective is not to have government funding for unnecessarily expensive projects. Unfortunately the MUP has not been increased to meet realistic prices in many urban areas so it is extremely difficult to plan a project within the MUP in those municipalities.

RECOMMENDATION #7

The maximum unit prices should be reviewed on a regular basis and updated to be current with realistic local municipal land and building costs.

Non profit housing corporations and co-operatives are not only subject to MUPs but are also limited in their abilities to land bank and the variety of housing types they may construct.

RECOMMENDATION #8

The program restrictions on non profit and co-op housing should be amended to allow for:

- ***bridge financing for short term land banking;***
- ***the creation of single family and semi-detached homes in settlement areas as designated in official plans for rural municipalities;***
- ***joint ventures with developers;***
- ***sale of non-profit and co-op units to allow for recovery of equity by the non-profit or co-op to be re-invested in additional affordable housing, this must be accompanied by a form of speculation control like a right of first refusal buy back.***

Rental Housing

The lack of affordable rental housing is the most serious affordable housing supply problem in the province. It is trite to say that very little rental housing has been constructed in the province without government involvement for many years. There is a perception among builders and developers that this is due to the rent review system. If the Provincial Government does not take major steps to alter the rent review system then it must plan for government funding to be involved in meeting almost the entire demand for new affordable rental housing.

The Landlord and Tenant Act is also seen as a hindrance to the creation of new rental accommodation in existing homes. There is a need to recognize the special concerns of the landlord that lives in the same house as his or her tenant.

RECOMMENDATION # 9

The Provincial Government must either:

(a) undertake major changes to the rent review system with the goal of reducing impediments to the creation of rental housing, or

(b) plan for funding commitments to ensure the creation of sufficient affordable rental housing.

RECOMMENDATION #10

The Landlord and Tenant Act should be amended to provide less expensive and more efficient procedures to "live in" landlords to enforce their rights against tenants in breach of that Act.

Equity Corporations

The following paragraph is a quote from the submission of the City of Waterloo.

> A public, private or joint venture corporation could be established to create entry level housing for purchase by first time home buyers of moderate means. Units would be offered at 50% of market value with the equity corporation holding a constant 50% share. Increases in equity realized at time of resale would be jointly shared by the occupant and the corporation. Minor maintenance would be assigned to the occupant through an agreement. Major improvements must be negotiated between the occupant and the corporation since equity on the investment should be shared. This vehicle would dramatically lower the entry level of ownership housing and allow some gains to occupants through the building of equity. The occupant would have the option of buying the corporation's share at any time at fair market value. Increases in equity at resale coupled with buyouts would create investment capital to sustain the corporation.

RECOMMENDATION #11

Further to the above noted submission of the City of Waterloo, the Provincial Government should undertake either the creation of its own equity corporation or create the legislative framework to allow for the creation of such a private corporation.

Taxation

The provincial and federal taxation powers both present a vehicle for the encouragement of the creation of affordable housing and the discouragement of speculation in the housing market.

The provincial land transfer tax (LTT) may be used to impose a higher tax on offshore investment in residential property. It could be significantly graduated so that luxury residential housing pays a significantly higher LTT than moderately priced housing, the additional revenue to be directed towards affordable housing programs. The LTT could also be eliminated for private rental housing and varied according to density.

RECOMMENDATION #12

That the Provincial Government create and implement tax incentives for the creation of affordable housing with emphasis on rental and tax penalties for land speculation.

Inter-Ministerial Coordination

In addition to the proposals and recommendations presented above, The Association believes that the Provincial Government can only effectively deal with the affordable housing problem with a comprehensive approach. The above noted reviews of provincial programs and legislation "... should draw together not only the Ministries of Municipal Affairs and Housing, but also the Ministries responsible for income allowance programs, related social and health services programs for special needs housing, provincial land banks, taxation reforms and so on." (from Peel response). Co-operative provincial planning must also include those ministries that have jurisdiction that directly impacts the land use planning process including the Ministries of the Environment and Agriculture and Food.

ROLE OF THE FEDERAL GOVERNMENT

The Federal Government also has great potential for directly influencing the creation of more affordable housing for Ontario.

"The Federal Government currently owns more than 10,000 hectares of land in and around Metro Toronto" (Globe and Mail, August 27, 1988). A Housing First policy for the disposition of surplus land held by the Federal Government would show a true commitment to addressing the housing crisis.

> ***RECOMMENDATION #13***
>
> ***The Federal Government create an explicit Housing First policy for surplus lands under the same terms as outlined in recommendation #4.***

Municipal infrastructure is "the cornerstone upon which economic activity and development are based" (John Eakins, Minister of Municipal Affairs).* Last August, at their annual meeting, the provincial and territorial Ministers of Municipal Affairs gave unanimous approval to a resolution asking the Federal Government to establish a national municipal support program and to designate a minister to negotiate a funding agreement with the provinces and territories.* Amo strongly supports this resolution. The Federal Government should recognize the profound importance of municipal infrastructure as expressed by Minister Eakins by responding positively to the resolution of the provincial and territorial ministers of municipal affairs.

> ***RECOMMENDATION #14***
>
> ***It is recommended that the Federal Government establish a national municipal infrastructure support program.***

* As noted in FORUM September-October 1988 edition.

TABLE OF RECOMMENDATIONS

RECOMMENDATION #1

(a) Where guidelines are to accompany a policy statement they must be released at the same time as the draft policy statement.

(b) AMO should be provided the opportunity for a two staged response. During the general consultation period AMO would submit a preliminary response. After the deadline for submissions has passed Ministry staff and AMO representatives should review and discuss the all submissions, including those of government ministries and agencies, together for an agreed upon time period after which AMO will make its final response.

(c) The Planning Act should be amended to require the Minister to give reasons why a provincial interest is affected by a matter when he\she uses the Ministerial "prerogative" powers under the Planning Act. Further, such reasons must include detailed recommendations to the subject municipality as to what that municipality may be expected to do in order to comply with a policy statement.

(d) Until such time as recommendation #1(c) is carried out the Minister of Municipal Affairs should make a clear commitment in each policy statement issued to give the reasons and recommendations noted in #1 (c).

(e) The Provincial Government must establish a formal procedure for expressing Provincial priorities with respect to conflicting or potentially conflicting provincial policy statements, guidelines and any other vehicle for expressing provincial interest with respect to municipal planning. This procedure should provide a clear written statement of provincial priorities to municipalities in advance of their creation of official plans, zoning-by laws and other Planning Act tools.

(f) Where recommendation #1 (e)is not possible the minimum requirement is for the Provincial Government to prepare comprehensive checklists for development applicants which would clearly express the provincial interests and priorities that a development application should address and the provincial criteria for evaluating that application.

RECOMMENDATION #2

A new provincial housing policy statement should be drafted by a committee with representatives from AMO, the Ministries of Municipal Affairs and Housing and representatives of the development and building industries.

RECOMMENDATION #3

The Planning Act, the Municipal Act and other relevant legislation would have to be amended where necessary to provide municipalities with clear authority in the following areas:

(a) Control tenure through zoning and subdivision agreements, this power to be limited to providing for the creation of affordable housing only.

(b) Require land dedications for affordable housing or cash in lieu.

(c) Power to impose "use it or lose it" conditions on subdivision agreements that are not fulfilled within agreed to time periods.

(d) Control cost and price through zoning and subdivision agreements.

(e) To tax land subject to unregistered subdivision agreements on the basis of the land use described in the subdivision agreement.

(f) To zone for maximum lot and unit sizes.

(g) Improved rights of access to enforce by-laws.

RECOMMENDATION #4

(a) The Provincial Government should forthwith publish an inventory of its undeveloped and underdeveloped land holdings in the Greater Metro Toronto area, including a listing of the water and sewerage capacity allotted to those lands expressed in absolute terms and as a percentage of the total unused capacity.

(b) As soon as possible thereafter the Provincial Government should publish a similar inventory with similar terms for all of its lands that have potential for development. Such potential should not be based on proposed government use for the lands but on its potential for housing development if the government were to release it.

(c) The Provincial Government should aggressively seek proposals for affordable housing development on the lands noted in 4 (a) and (b).

(d) This Housing First Policy should be applied in urban areas across the board to all lands held by all Provincial Government Ministries.

RECOMMENDATION #5

The Provincial Government should not wait for the Federal Government to investigate this matter but should actively and aggressively undertake its own investigation immediately with a commitment to make the results publicly available.

RECOMMENDATION #6

Since the Draft Housing Policy Statement expressed the planning for servicing of residential growth on a ten year time frame as a matter of provincial interest, the Provincial Government should support that provincial interest with a ten year commitment to adequate funding for the development of municipal infrastructure.

RECOMMENDATION #7

The maximum unit prices should be reviewed on a regular basis and updated to be current with realistic local municipal land and building costs.

RECOMMENDATION #8

The program restrictions on non profit and co-op housing should be amended to allow for:

- *bridge financing for short term land banking;*
- *the creation of single family and semi-detached homes in settlement areas as designated in official plans for rural municipalities;*
- *joint ventures with developers;*
- *sale of non-profit and co-op units to allow for recovery of equity by the non-profit or co-op to be re-invested in additional affordable housing, this must be accompanied by a form of speculation control like a right of first refusal buy back.*

RECOMMENDATION # 9

The Provincial Government must either:

(a) undertake major changes to the rent review system with the goal of reducing impediments to the creation of rental housing, or

(b) plan for funding commitments to ensure the creation of sufficient affordable rental housing.

RECOMMENDATION #10

The Landlord and Tenant Act should be amended to provide less expensive and more efficient procedures to "live in" landlords to enforce their rights against tenants in breach of that Act.

RECOMMENDATION #11

Further to the above noted submission of the City of Waterloo, the Provincial Government should undertake either the creation of its own equity corporation or create the legislative framework to allow for the creation of such a private corporation.

RECOMMENDATION #12

That the Provincial Government create and implement tax incentives for the creation of affordable housing with emphasis on rental and tax penalties for land speculation.

RECOMMENDATION #13

The Federal Government create an explicit Housing First policy for surplus lands under the same terms as outlined in recommendation #4.

RECOMMENDATION #14

It is recommended that the Federal Government establish a national municipal infrastructure support program.

APPENDIX - I

I. The Planning Act, 1983

i. Section 3 -- Policy Statements

Subsection 3(1) of the Planning Act means that the Minister (of Municipal Affairs) can establish that a matter is of provincial interest by the issuance of a policy statement. Subsection 3(5) outlines which bodies shall have regard to such policy statements when exercising any authority that affects any planning matter including every municipal council, every ministry (including of course the Ministry of the Environment and the Ministry of Agriculture and Food) or government agency and the Ontario Municipal Board, among others. Currently only two policy statements have actually been issued, one in relation to mineral aggregate resources, issued on May 1986 and the other in relation to flood plain planning issued on August 11, 1988. The words "shall have regard to" have yet to receive an Ontario Municipal Board (OMB) or Judicial interpretation.

ii. Section 17 -- Official Plans

Section 17 allows for the creation of official plans by municipalities. Under subsection (11) the Minister may refer any official plan to the OMB. Subsections (19), (20) and (21) allow the Minister to give notice to the OMB that parts of the plan are likely to adversely affect a provincial interest (a provincial interest can be established by a policy statement as per section 3 noted above). **When the Minister has given such notice, the Lieutenant Governor in Council (the Cabinet) may overrule the decision of the OMB and may modify the parts of the plan that the Minister believes adversely affect the provincial interest.**

iii. Section 18 -- Planning Boards

Section 18 refers to plans created by planning boards. Subsection 18(5) gives the Minister and the Cabinet the same powers to deal with plans created by planning boards as they have with official plans created by municipal councils.

iv. Section 22 -- Official Plan Amendments

Under Section 22 a person can request the Minister to refer an official plan amendment to the OMB if the municipal council fails to adopt the amendment. Subsections 22(5) and (6) give the Minister and the Cabinet the same rights to overrule the OMB as they have under section 17 noted above.

v. Section 23 -- Ministerial Request for Official Plan Amendment

Section 23 gives the Minister the right to request a municipality to amend its official plan where a matter of provincial interest is likely to be adversely affected by that plan. The Minister can make the amendment if the municipality refuses, but the Minister can be required to request the OMB to hold a hearing on the matter. Nevertheless, the Cabinet can overrule the OMB decision and make the amendments to the plan.

vi. Section 34 -- Zoning By-laws

Section 34 establishes the authority for local municipalities to establish land use control zoning by-laws. Under subsection 34(18) the Minister can appeal any zoning by-law to the OMB. **As with the sections on official plans, the Minister may give notice of a provincial interest adversely affected and the Cabinet may overrule the OMB and repeal or amend the by-law.**

vii. Section 46 -- Ministerial Zoning Order

Section 46 gives the Minister the power to make orders exercising any of the zoning by-law powers under Section 34 but without being subject to the requirements of prior notice and public hearings. Such by-laws created by the Minister prevail over conflicting municipal by-laws. Where a reasonable request is made of the Minister to amend or revoke an ordered by-law, the Minister shall request the OMB to hold a hearing. The OMB decision would normally be final, but once again the Minister may give notice to the OMB of a provincial interest that is likely to be adversely affected. Once such notice is properly given the Cabinet may overrule the OMB.

Taken together the above sections of the Planning Act show that the significance of a policy statement as an expression of provincial interest goes beyond merely "shall have regard to". Once a policy statement has been issued it can be used by the Provincial Government to create or to change any municipal official plans, official plan amendments and zoning by-laws.

The above noted sections of the Planning Act do not require the Minister to give reasons why a part or parts of official plans, official plan amendments and zoning by-laws would likely have an adverse effect on a provincial interest. Nor does the Housing Policy Statement indicate that the Minister will give such reasons or any detailed recommendation to municipalities as to what a municipality may be expected to do in order to comply with the Housing Policy Statement.

APPENDIX – II

II. Sections of the Planning Act with respect to the Significance of Policy Statements under the Planning Act

i. Section 3 -- Policy Statements

Policy Statement

(1) The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by The Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest.

Regard to be had to policy statement

(5) In exercising any authority that affects any planning matter, the council of every municipality, every local board, every minister of the Crown and every ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under subsection (1). 1983, c.1,s.3.

ii. Section 17 – Official Plans

Referral of plan or part thereof to O.M.B.

(11) The Minister may refer the plan or any part of the plan to the Municipal Board and where the council or any person or other body requests the Minister to refer the plan or any part of the plan to the Municipal Board, the Minister shall refer the plan or such part to the Board, together with the statement mentioned in subsection (12), unless in his opinion, such request is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay.

Where provincial interest adversely affected

(19) Where the plan or any part of the plan is referred to the Municipal Board under subsection (11), the Minister, if he is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the plan or the part thereof, may so advise the Board in writing not later than thirty days before the day fixed by the Board for the

hearing of the referral and the Minister shall identify the part or parts of the plan or the part or parts of the part of the plan, as the case may be, by which the provincial interest is, or is likely to be, adversely affected.

Decision where provincial interest

(20) Where the Municipal Board has received notice from the Minister under subsection (19) the decision of the Board is not final and binding in respect of the part or parts identified in the notice unless the Lieutenant Governor in Council has confirmed the decision in respect of the part or parts.

Power of Lieutenant Governor in Council

(21) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board in respect of the part or parts of the plan identified in the notice and in doing so may direct the Minister to modify the part or parts of the plan. 1983,c. 1,s.17.

iii. Section 18 -- Planning Boards

Application of s.17 (2-21)

(5) Where a planning area consists of the whole of one or more municipalities and territory without municipal organization the provisions of subsections 17 (2) to (21) apply, with necessary modifi- cations, in respect of the part of the planning area that consists of territory without municipal organization as though the planning board were the council of a municipality and the secretary-treasurer of the planning board were the clerk of the municipality. 1983, c. 1, s.18.

iv. Section 22 -- Official Plan Amendments

Referral of proposed amendment to plan to O.M.B.

(1) Where any person requests a council to initiate an amendment to an official plan, other than an official plan that applies in whole or in part to territory without municipal organization, and the council refuses to adopt the amendment or fails to adopt it within thirty days from the receipt of the request, such person may request the Minister to refer the proposed amendment to the Municipal Board.

Powers of Minister to confer, etc.

(3) The Minister may confer on the proposed amendment in like manner as he is authorized to confer under subsection 17 (9) and he may refuse the request to refer the proposed amendment to the Municipal Board on providing a written explanation for the refusal or may refer the proposed amendment to the Board.

Where provincial interest adversely affected

(5) Where a proposed amendment is referred to the Municipal Board under subsection (3), the Minister, if he is of the opinion that a matter of provincial interest is, or is likely to be adversely affected by the proposed amendment, may so advise the Municipal Board in writing not later than thirty days before the day fixed by the Board for the hearing of the referral and the Minister shall identify the part or parts of the proposed amendment by which the provincial interest is, or is likely to be, adversely affected.

Procedure by O.M.B.

(6) Where the Municipal Board receives notice from the Minister under subsection (5) the provisions of subsections 17 (20) and (21) apply with necessary modifications. 1983, c.1, s. 22.

v. Section 23 – Ministerial Request for Official Plan Amendment

Request by Minister to amend plan

(1) Where the Minister is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 is, or is likely to be, adversely affected by an official plan, the Minister may request the council of a municipality to adopt such amendment as the Minister specifies to an official plan and, where the council refuses or fails to adopt the amendment within such time as is specified by the Minister in his request, the Minister may make the amendment.

Hearing by O.M.B.

(2) Where the Minister proposes to make an amendment to an official plan under subsection (1), the Minister may, and on the request of any person or municipality shall, request the Municipal Board to hold a hearing on the proposed amendment and the Board shall thereupon hold a hearing as to whether the amendment should be made.

Decision of O.M.B.

(5) The Municipal Board, after the conclusion of the hearing, shall make a decision as to whether the proposed amendment, or an alternative form of amendment, should be made but the decision is not final and binding unless the Lieutenant Governor in Council has confirmed it.

Powers of L.G. in C.

(6) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board made under subsection (5) and in doing so may direct the Minister to amend the plan in such manner as the Lieutenant Governor in Council may determine. 1983, c. 1, s.23.

vi. Section 34 -- Zoning By-laws

Appeal to O.M.B.

(18) Any person including the Minister or agency may, within thirty-five days from the date of the passing of the by-law, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

Powers of O.M.B.

(27) The municipal Board may,

(a) dismiss the appeal; or

(b) allow the appeal in whole or in part and repeal the by-law in whole or in part or amend the by-law in such manner as the Board may determine or direct the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Board's order.

Where provincial interest adversely affected

(28) Where an appeal has been filed under subsection (18), the Minister, if he is of the opinion that a matter of provincial interest is, or is likely to be adversely affected by the by-law, may so advise the Municipal Board in writing not later than thirty days before the day fixed by the Board for the hearing of the appeal and the Minister shall

identify the part or parts of the by-law by which the provincial interest is, or is likely to be, adversely affected.

Procedure

(29) Where the Municipal Board has received notice from the Minister under subsection (28) and has made a decision on the by-law the Board shall not make an order under subsection (27) in respect of the part or parts of the by-law identified in the notice.

Power of L.G. in C.

(30) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board in respect of the part or parts of the by-law identified in the notice and in doing so may repeal the by-law in whole or in part or amend the by-law in such manner as the Lieutenant Governor in Council may determine.

vii. Section 46 -- Ministerial Zoning Order

Power of Minister re zoning and subdivision control

(1) The Minister may by order,

(a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34,

Power of Minister to allow minor variances

(2) Where an order has been made under clause (1)(a), the Minister, in respect of the lands affected by the order, has all the powers in respect of such order as a committee of adjustment has under subsections 44(1) and (2) in respect of a by-law passed under section 34, but the provisions of subsections 44(4) to (8) and (10) to (20) do not apply to the exercise by the Minister of such powers.

Order prevails over by-law in event of conflict

(3) In the event of a conflict between an order made under clause (1)(a) and a by-law that is in effect under section 34 or 37, or a predecessor thereof, the order prevails to the extent of such conflict, but in all other respects the by-law remains in full force and effect.

Hearing by O.M.B.

(10) Where an application is made to the Minister to amend or revoke in whole or in part any order

made under subsection (1), the Minister may, and on the request of any person shall, request the Municipal Board to hold a hearing on the application and thereupon the Board shall hold a hearing as to whether the order should be amended or revoked in whole or in part.

Decision of O.M.B.

(13) The Municipal Board after the conclusion of the hearing shall make a decision to either amend or revoke the order in whole or in part or refuse to amend or revoke the order in whole or in part and the Minister shall, except as provided in subsection (16), give effect to the decision of the Board.

Where provincial interest adversely affected

(15) Where the Minister has requested the Municipal Board to hold a hearing as provided for in subsection (10), if he is of the opinion that a matter of provincial interest is, or is likely to be adversely affected by the requested revocation or amendment, he may so advise the Municipal Board in writing not later than thirty days before the day fixed by the Board for the hearing of the application.

Decision where provincial interest

(16) Where the Municipal Board has received notice from the Minister under subsection (15) and has made a decision on the requested revocation or amendment the Minister shall not give effect to the decision under subsection (13) unless the Lieutenant Governor in Council has confirmed the decision.

Disposition by L. G. in C.

(17) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Municipal Board where notice of a matter of provincial interest was given under subsection (15) and in doing so may direct the Minister to amend or revoke the order in whole or in part.

APPENDIX -- III

ACKNOWLEDGEMENTS

The Association would like to express its appreciation to the sub-committee members who volunteered their time to assist the committees of AMO and Association staff in developing this response to the Ministry of Housing's draft Housing Policy Statment.

Ms. Marnie Cappe, Regional Housing Coordinator, Regional Municipality of Ottawa Carleton

Mr. Jim Coughlin, Director of Planning, City of St. Catharines

Mr. John Nigh, Clerk, City of Scarborough

Mr. Nick Tunnacliffe, Director, Policy and Program Div. Ottawa-Carlton Region

Mr. Keith Ward, Director, Policy Development, Peel Non-Profit Housing

Ms. Wendy Wright, Commissioner of Planning, City of Cambridge

Mr. Bob Yamashita, Project Manager, Housing Department, City of Toronto

AMO STAFF

Philip Ferguson, Policy Analyst, AMO

PUBLICATIONS ISSUED IN THE "AMO REPORT" SERIES

87-1	A Proposed Model of Collective Bargaining and Required Amendments for the Fire Departments Act
87-2	Response to the Final Report of the Advisory Committee to the Minister of Municipal Affairs on Municipal Liability Insurance in Ontario
87-3	Response to the 1986 Draft on Flood Plain Planning Policy Statement
87-4	Response to the Rental Housing Protection Act
87-5	The Future of Social Assistance in Ontario - Report to the Social Assistance Review Committee
87-6	AMO Submission to Provincial Premier and Executive Council of Ontario
87-7	Recommendations on the Pay Equity Act
87-8	AMO Discussion Paper on Lot Levies and Front-End Financing
87-9	A Proposed Model of Collective Bargaining and Required Amendments for the Police Act
87-10	Response to Bill 106 - An Act to Amend the Occupational Health and Safety Act
87-11	Unconditional Grants Proposal for 1988
87-12	The Licensing of Businesses by Municipalities
88-1	Education Funding in Ontario
88-2	Preliminary Response to New Directions for Child Care
88-3	1988 Provincial Budget Submission
88-4	AMO Submission to Provincial Cabinet
88-5	AMO Response to the Report of the Advisory Committee on County Government: "Patterns for the Future"
88-6	Pressures on the Partnership: Response to the Provincial-Municipal Social Services Review Discussion Paper
88-7	AMO's Unconditional Grants Proposal for 1989
88-8	AMO's Response to "Rental Housing Protection Act: Future Directions"
88-9	Municipal Authority to Regulate Occupancy on the Basis of Relationship
88-10	AMO Response to Bill 170 - Aggregates Resources Act
88-11	AMO Position on "Controlling Industrial Discharges to Sewers"
88-12	AMO Response to "A Review of the Conservation Authorities Program"
88-13	AMO Response to Bill 174 The Intervenor Funding Project
89-1	AMO Brief to the Province of Ontario: 1989-90 Transfer Payment Announcement

89-2 AMO Response to "Financing Growth-related Captial Needs"

89-3 AMO Report on Draft Housing Policy Statement

89-4 Property Tax: a Provincial Tax: AMO Presentation to Standing Committee of Finance and Economic Affairs

89-5 "Salvaging the Partnership" AMO/OMAA 1989 Submission to Cabinet

- AMO Waste Management Study: The Waste Management Planning and Approvals Process

Copies of all the reports in this series are available at $10.00 each, (except as noted) for postage and handling, prepaid, from: Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 805, Toronto, Ontario, M5J 1V6. Please make cheques payable to the Association of Municipalities of Ontario.

For a list of AMO reports prior to 1986, please contact the AMO office.